American Ry. Traffic Co. (1921) 198 App. Div. 303, 190 N. Y. Supp. 674. Reading the principal case in the light of this decision, it would seem that the directors may be joined in every such case, on the ground of impossibility of satisfaction by the corporation alone. See N. Y. Gen. Corp. L. § 109.

CORPORATIONS—TAXATION—NON-PAR VALUE STOCK.—A New York statute provided that stock without par value of foreign corporations doing business in the state should, in estimating the minimum franchise tax, be deemed to have a face value of $100.00 a share. The State Tax Commission computed the tax of the relator on this basis. In fact the stock was worth $8.55 a share. *Held,* the statute was unconstitutional, and the valid previous law controlling, the tax should be determined by the actual capital employed within the state. *People ex rel. Terminal & Town Taxi Corporation* v. *Walsh* (1922) 195 N. Y. Supp. 184.

A transfer tax on stock based on par value is constitutional. *People ex rel. Hatch* v. *Reardon* (1906) 184 N. Y. 431, 77 N. E. 970; *aff'd* (1907) 204 U. S. 152, 27 Sup. Ct. 188. But one based on number of shares sold regardless of par value is void because it does not bear even a plausible relation to the actual value. *People ex rel. Farrington* v. *Mensching* (1907) 187 N. Y. 8, 79 N. E. 884; see *State* v. *Brodnax* (1910) 228 Mo. 25, 128 S. W. 177. Many recent statutes provide that non-par value stock shall, in computing certain taxes, be deemed to have a face value of $100.00 per share. Del., Laws 1917, p. 321; N. Y., Laws 1920, c. 640, § 214 (7). There being no such statute in Michigan, the Delaware statute was applied by the Michigan Court in computing the license tax of a Delaware corporation doing business in Michigan. *Detroit Mortgage Co.* v. *Secretary of State* (1920) 211 Mich. 320, 178 N. W. 697; *aff'd* on rehearing (1921) 211 Mich. 326, 182 N. W. 526. But other courts in analogous cases have declared that these taxes should be based upon actual value of assets in the state, and have not in discovering those assets, enforced arbitrary values imposed by laws of the incorporating states. *State ex rel. Standard Tank Car Co.* v. *Sullivan* (1920) 282 Mo. 261, 221 S. W. 728; *North American Petroleum Co.* v. *State Charter Board* (1919) 105 Kan. 161, 181 Pac. 625. In the instant case such a statute came before the courts in the enacting state. It was held unconstitutional, the court pointing out that a law setting an arbitrary value on every share of non-par value stock, and then taxing that value, in effect taxes the number of shares regardless of actual value. And this is unconstitutional. *People ex rel. Farrington* v. *Mensching, supra.* The case seems sound in legal theory and wise from the point of view of economics. It has, moreover, the great advantage of conforming with the Federal practice; the National Government for income tax purposes takes into account only the actual value of such stock. (1918) *Treasury Decision* 1690 [(1918) 20 Treas. Dec. Intern. Rev. 217, § 562]; (1921) Digest of Income Tax Rulings 476 (Ruling No. 644); 452 (Ruling No. 390); 221 (Ruling No. 1893); 56 (Ruling No. 1286).

CRIMINAL LAW—LARCENY—VALUE OF ARTICLE IMMATERIAL.—The defendant was indicted for the larceny of papers that were of no substantial intrinsic value, but were of value to the prosecutor because involving his reputation. On appeal, *held,* conviction affirmed. *Commonwealth* v. *Weston* (Mass. 1922) 135 N. E. 465.

One of the requirements of larceny is that the goods taken be of some value. *People* v. *Loomis* (N. Y. 1847) 4 Denio 380; *Moon* v. *Commonwealth* (1848) 8 Pa. St. 260. By value is no longer meant something of serious practical importance as opposed to mere fancy, but something desirable to someone. See 3 Stephen, *History of Criminal Law* (1883) § 43. Since written instruments have no intrinsic value of their own, being mere evidences of a right which exists independent-

ly of the evidence, they were not the subject of larceny at common law. 4 Blackstone, *Commentaries* *234. By artificial reasoning, the piece of paper which contained the evidence of the debt was not deemed capable of being stolen, since it was absorbed in the chose of action which was of a higher nature. *Regina* v. *Watts* (1854) 6 Cox C. C. 304; 2 Russell, *Law of Crimes* (7th Eng. ed. 1910) 1264. But if the chose in action was void, or if the debt had been paid, an indictment lay for the theft of the piece of paper, if so described. *Rex* v. *Clark* (1810) Russ. & R. 180; *Regina* v. *Watts, supra;* see *People* v. *Cariclis* (1915) 29 Cal. App. 166, 169, 154 Pac. 1061. Paper not embodying a chose in action has always been the subject of larceny, the trivality of its value being immaterial, even though less than that of the smallest known coin. See *Regina* v. *Morris* (1840) 9 Carr. & P. 209, 210; *Wolverton* v. *Commonwealth* (1881) 75 Va. 909, 913. And this is true though it be of value only to the owner. See *State* v. *Hinton* (1910) 56 Ore. 428, 434, 109 Pac. 24; *contra, Payne* v. *People* (N. Y. 1810) 6 Johns. 103. The value of property which is not marketable is determined by its worth to the owner. *People* v. *McGrath* (1888) 5 Utah 525, 17 Pac. 116; *contra, State* v. *James* (1877) 51 N. H. 67. In holding that goods need not have any appreciable or market value to be the subject of larceny, the instant case is clearly sound.

EVIDENCE—PRESUMPTIONS—BURDEN OF PROOF.—In an action on a check, the defendant proved that it was given in payment for thirty barrels of whiskey. *Held,* for the defendant. The consideration is illegal unless legalized by permit: The burden is on the plaintiff to prove the transaction legal. *Adler* v. *Zimmerman* (1922) 233 N. Y. 431, 135 N. E. 840.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration. See N. I. L. § 24. By the weight of authority under the Negotiable Instruments Law, the defendant has the burden, not only of introducing some evidence of lack of consideration, but of ultimately establishing it by a preponderance of evidence. *Piner* v. *Brittain* (1914) 165 N. C. 401, 81 S. E. 462; see N. I. L. § 28; Brannan, *Negotiable Instruments Law* (3rd ed. 1920) 95. Evidence compatible with either legality or illegality of the consideration ought not, in general, to destroy the plaintiff's prima facie case, for if there are two alternatives the law presumes legality. *Cincinnati & T. P. Ry.* v. *Rankin* (1916) 241 U. S. 319, 36 Sup. Ct. 555; *Anderson* v. *Erie R. R.* (1918) 223 N. Y. 277, 119 N. E. 557. The weight of this presumption varies. In criminal law the prosecution is forced to establish its case beyond a reasonable doubt See *Coffin* v. *United States* (1895) 156 U. S. 432, 459, 15 Sup. Ct. 394. In civil cases where the action is predicated on the criminality of the defendant, the general rule is that the plaintiff need only show a preponderance of evidence. *New York County Nat. Bk.* v. *Herrman* (1916) 173 App. Div. 814, 160 N. Y. Supp. 422; *Cooper* v. *Spring Valley Water Co.* (1911) 16 Cal. App. 17, 116 Pac. 298; *contra, McInturff* v. *Insurance Co. of N. A.* (1910) 248 Ill. 92, 93 N. E. 369; *cf. Burgill* v. *Aniol* (1920) 218 Ill. App. 466. Where the act is made generally unlawful, however, the presumption of innocence yields to the presumption that what is true in general is true in particular, and the burden of proof is on the person claiming to come within an exception. *People* v. *Clark* (1901) 61 App. Div. 500, 70 N. Y. Supp. 594; see Bishop, *Statutory Crimes* (3rd ed. 1901) § 1051; *contra, Davis* v. *Kuehn* (Tex. Civ. App. 1909) 119 S. W. 118. This rule, as illustrated by the instant case, has the advantage of practicability, for it is relatively simple for the plaintiff if the transaction be legal to prove it by producing the permit, since its existence is peculiarly within his knowledge. *Cf. Harris* v. *White* (1880) 81 N. Y. 532, 547. Furthermore, the National Prohibition Act makes possession of liquors prima facie evidence of an intention to dispose of them illegally. See National Pro-